

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, : Case No. 2:13-CR-0095
Plaintiff, : JUDGE ALGENON L. MARBLEY
v. :
AMIRE T. SMITH, :
Defendant. :
:

OPINION AND ORDER

This matter comes before the Court on Defendant's Motion for Review of Detention Order (Doc. 10). The Government has filed a Response in Opposition (Doc. 12). For the reasons set forth herein, Defendant's Motion is **DENIED**.

LAW AND ANALYSIS

Although Defendant does not cite any law in his Motion, the Court recognizes Defendant's right to appeal the pretrial detention decision of the Magistrate Judge, decided under the Bail Reform Act of 1984, 18 U.S.C. §§ 3141-3150. Over Defendant's opposition, Magistrate Judge King ordered Defendant detained while awaiting trial. Under 18 U.S.C. § 3142(e):

[s]ubject to rebuttal by the [Defendant], it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the [Defendant] as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed [an] offense for which a maximum term of imprisonment of ten years or more is prescribed by the Controlled Substances Act (21 U.S.C. 801 et seq.).

Defendant is charged with three violations of 18 U.S.C. § 924(c). If convicted on all three counts, the minimum sentencing guidelines would result in Defendant receiving a sentence in excess of ten years, perhaps as many as 55 years. Thus, there is a presumption Defendant should

be detained. On entertaining appeal of a Magistrate Judge's detention order, this Court conducts *de novo* review of the facts.

With regard to assuring appearance of Defendant, the Magistrate Judge correctly found the Defendant successfully rebutted the presumption because he has extensive ties to the community and has not attempted to flee the jurisdiction, despite many opportunities. Furthermore, Defendant has hired counsel and begun preparations to defend himself in this Court. This Court agrees the Defendant does not pose a significant risk of flight.

Defendant contends the Magistrate Judge erred, however, in finding him a potential danger to the community. Defendant argues that he has demonstrated he is not a danger to the community. The Government, to the contrary, urges this Court to affirm the Magistrate Judge's finding that Defendant presents a potential danger to the community.

First, the Court notes that the Pretrial Services Officer, in her report, listed nine reasons she believes Defendant poses a danger to the community. Second, Defendant has a criminal record containing multiple firearm offenses, including a conviction in a U.S. District Court in New York in 2006 for Conspiracy to Traffic Firearms, a conviction which yielded a sentence of 33 months' imprisonment. Firearms offenses, particularly the trafficking of deadly weapons, are inherently dangerous to the community. While on supervised release following that conviction, Defendant was twice arrested for operating a motor vehicle while intoxicated, more conduct which endangers the community. Defendant's record demonstrates that conditions of supervised release have not prevented him from posing a danger the community. Finally, Defendant allegedly committed the offenses for which he is indicted here while on supervised release.

In light of Defendant's history of conduct which endangers the community and his inability to conform to the requirements of supervised release, this Court agrees with the

Magistrate Judge that Defendant does present a danger to the community that cannot be limited by imposing conditions of supervised release. Hence, Defendant has failed to rebut the presumption in favor of detention under 18 U.S.C. § 3142(e). This Court affirms the findings and Detention Order of the Magistrate Judge.

CONCLUSION

For the foregoing reasons, Defendant's Motion is **DENIED**. Defendant will remain detained pending trial as ordered by Magistrate Judge King.

IT IS SO ORDERED.

s/ Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

DATED: April 19, 2013